Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1993

THELMA M. BAILEY
Petitioner

v.

BOARD OF EDUCATION OF THE
DETROIT PUBLIC SCHOOLS
Respondent

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# PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

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B. WAS APPELLEE'S ACTION IN DISCHARGING APPELLANT PROPER UNDER THE STANDARD SET FORTH IN THE TEACHER'S TENURE ACT, WHICH REQUIRES THAT DISCHARGE OF A TENURED TEACHER BE SUPPORTED BY REASONABLE AND JUST CAUSE?

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THE PETITIONER, THELMA M. BAILEY, Pro Se, hereby petitions this Court to issue a Writ of Certiorari to review the opinions of the State of Michigan Supreme Court entered on November 30, 1993.

## 11. OPINIONS BELOW

(a) On August 12, 1988 the State Commissioner issued its decision and order which is attached hereto and designated as Appendix D.

(b) On August 1, 1990 the Oakland Circuit Court issued its affirmative decision which is attached hereto and designated as Appendix C.

(c) On April 30, 1993 the Michigan Court of Appeals also issued its affirmative decision which is attached hereto and designated as Appendix B.

(d) On November 30, 1993 the Michigan Supreme Court issued its order denying Plaintiff-Appellant the application for leave to appeal, which is attached hereto and designated as Appendix A.

## 111. JURISDICTION

(a) The date of judgment which is sought to be reviewed is November 30, 1993.

(b) The jurisdiction of this Court is invoked pursuant to 28 U. S. C. Section 1254 (2), and the Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States.

## 1V. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the United States Fifth Amendment (right to due process of law), Sixth Amendment (right to speedy trial hearing), and Fourteenth Amendment (applying the Fifth and Sixth Amendments to the states).

## V. STATEMENT OF THE CASE

### A. NATURE OF THE CASE

Appellant was first employed by the Appellee Board in 1968 as a substitute teacher. In 1979 Appellant became a contract teacher employed by the Board of Education of the Detroit Public School for a yearly salary instead of on a daily basis. Appellant received a teacher's probationary contract retroactive for the 1979-80 school year while at Ann Arbor Trail Middle School. Appellant received another teacher's probationary contract for the 1980-81 school year following assignments at the Foch Middle School, Southeastern High School, and Butzel Middle School. Appellant finally received a teacher's continuing contract at the beginning of the 1981-82 school year, while at Remus Robinson Middle School, before being assigned to Boynton and Von Steuben Middle Schools. The continuing contract was issued as a result of good ratings, evaluation, and recommendation during

re-assignments to different schools for economic necessity, closing due to construction, low student enrollment, or emergency substituting. The continuing contract that Appellant holds reads as follows;

" The undersigned teacher is hereby given a contract for services as a teacher which shall continue in effect from September 7, 1981 for this and the succeeding school years in accordance with the rules and regulations of the Board of Education, until such teacher resigns, elects to retire, is retired, or is dismissed for **reasonable and just cause after a fair hearing.**"

Appellant's re-assignment to Von Steuben was on or about October 12, 1981; and, was not by choice, since Appellant had refused to go out on a date with Mr. Posey Williams, principal, following an interview with him earlier, and he may have felt rejected or insulted. Now that Appellant was assigned to Von Steuben she became the victim of harass-

ment immediately. In short Appellant request-a transfer from Von Steuben on two separate occasions, but both requests were denied by Mrs. Evelyn Crane, Assistant Superintendent, who stated in writing that she would grant the request if Appellant changed the reason which was retaliation from principal due to complaining about him, and refusing his offer of intimacy. (At BH 40). Since the reason was truly stated, Appellant did not change it. The personnel department never inquired or investigate Appellant's complaint, and in April 1982 she received an unsatisfactory rating from Mr. Williams, which led to her transfer to another school as required by contract. At the other school Appellant received another unsatisfactory rating, and the Appellee Board voted to terminate her services on May 13, 1986. From that decision Appellant appealed to the Tenure Commission, and following a hearing, the commission upheld the termination. Nevertheless in the commission's

decision and order, the commission states, **"It is clear that Appellant made timely written complaints of harassment, discrimination, and retaliation which went unheeded by the regional Administration. Appellee Board made no attempt to rebut this evidence. Thus we conclude that Mr. Williams' eagerness to observe and evaluate Appellant's performance was motivated by retaliatory considerations."**

As a result of the unsatisfactory rating from Mr. Williams, Appellant was transferred on September 7, 1983 to Beaubien Junior High School where the late George Bibbs was principal. It was a surprise to learn that Mr. Bibbs and Mr. Williams were friends; and, that Mr. Williams had recently left Beaubien where he served as assistant principal. There at Beaubien, Appellant experienced continued on the job and sexual harassment by the late Mr. Bibbs. He often called Appellant to his office and tried to coerce her into "smoking a joint of weed" with him after school (V1-123).

Quite often Mr. Bibbs would pass Appellant on hall duty, next to her classroom; and, on the way to his office he would stop to hold and squeeze her hand. On December 10, 1990 the Detroit Free Press reported that the ill-will motivated Mr. Bibbs had died, and that "family members declined to reveal the cause of his death," following his retirement in December 1986 at age 62.

While Appellant was at Beaubien, Mr. Bibbs may have become nervous and suspicious when he saw her talking, from time to time, to Mr. Harold Williams, building representative. In short the late Mr. Bibbs, without any prior warning, made a move to put Appellant on a **Thirty-Day Evaluation Notice, effective March 17, to April 15, 1983.** (11 56 -57), and rated Appellant unsatisfactory on April 20, 1983. (111 - 95 and Exhibit 4). **Because of the haste or intent to mark Appellant unsatisfactory, the teacher's union contract was not followed in a way that could provide assist-**

ance and meaningful opportunity to correct any deficiencies the administrator pointed out should be improved.

Appellant was not given a fair hearing because of the timeliness of the Appellee Board hearing, from September 1983 to April 1986; and, because of board members constant rotation, tardiness, and leaving early, making it difficult to maintain a quorum; and, making it questionable if they were aware of the issues. The inconsistencies and changes in board members, and board president were due to their alleged problems, and some being fired from their jobs, as reported in the newspaper and on television, which altogether resulted in much of the timeliness.

The timely manner in which Dr. Tibbs, supervisor, took to get documents to Appellant during her five visits and nine observations should also be noted. At the time there were observations so close together, that it was impossible for Appellant to incorporate

any new suggestions, "practice, rehearse, polish the skills involved," and see results.

B. STATEMENT OF THE FACTS

The petitioner was charged by the late Mr. Bibbs in his memo of the following:

1. Failure to effectively plan, prepare, develop, and provide appropriate lessons and instructional activities for your classes and to otherwise consider the educational welfare of your students.

2. Failure to effectively and efficiently control students within the classroom so as to maintain a proper and safe atmosphere for learning (BH - 1).

Of the alleged charges, at no time before March 17th, did the late Mr. Bibbs apprise Appellant of any problems. Then for the purpose of rating Appellant unsatisfactory, Mr. Bibbs in his memo dated March 31, 1983 falsely accused Appellant of problems he said occured on March 8, 9, and 10 1983. That the late Mr. Bibbs did not address any other problem before or after those three dates in March is questionable.

On **March 8th**, Mr Bibbs stated that Appellant's lunch class was totally disorderly in the lunchroom. This was despite the fact that Appellant was not in the lunchroom; it was Mr. Bibbs' wife who was lunchroom supervisor, and the one in charge, in the lunchroom at the time.

On **March 9th**, Mr. Bibbs stated that there was a magazine set on fire on a gas burner in Appellant's classroom; and, that her male students had plugged up the boy's lavatory, where they were smoking, and where they had also set a waste receptacle on fire. This was despite the fact that Appellant was away for lunch and was not in the classroom. When asked by Gayle Boesky if Appellant was in the classroom at the time the magazine was smoldering, Mr. Bibbs said, "I believe she was" (V - 76). Yet there was no fire truck called as the custom is when there is fire or smoke, especially where children are involved.

On **March 10th**, when Appellant returned

from lunch she saw Mr. Bibbs waiting with counsellors to talk to students about repeated incidents in the boy's lavatory. Mr. Bibbs instructed Appellant to write up the students and submit to him, which he used as a set-up against Appellant in the guise of ineffective student control. **Coincidently all of the above three alleged incidents occured during lunch time, in connection with teacher's home economics food laboratory, at a time when she was out for lunch.** (Exhibit 4 - Attachments 1 and 111 99 - 104)

In the same memo dated August 31, 1983 Mr. Bibbs stated in writing the **purpose of the thirty-day notice** was for Appellant to demonstrate **improvement** in teaching performance **with assistance** from Mr. Harold Hill, assistant principal and Dr. Joyce Pack-Tibbs, supervisor. But Appellant did not receive any meaningful assistance. Instead, there was a scenario involving the three administrators,, in the following way.

Mr. Bibbs said, "I was suggesting to Mrs. Bailey that she take her problem to Mr. Hill in terms of curriculum and so forth, and that he would be better suited to help her in the academic area." (111 16, 17, and 19). Mr. Hill stated that " I sought the help of the vocational supervisor for the middle schools to come in and give me the assistance that I needed to help Mrs. Bailey make the corrections. That was in the person of Dr. Tibbs. (111 45 and 51). Dr. Tibbs in the meantime stated that "during the thirty-day period, by Mrs. Bailey's own contract, the supervisor is to observe at least one time. The purpose of the visits is to evaluate the performance of the teacher on site and if the teacher needs to have some additional assistance, we certainly provide the assistance even at that particular time." (11 58 -59).

Of special note, it should also be stated that Dr. Tibbs was a supervisor of industrial arts (11 - 8),, and that Appellant was the only

home economics teacher that she was supervising (11 9 and 18). Dr. Tibbs gave Appellant a list of seminar series to attend with dates of seminars that had already occured. (11 - 49, Exhibit 2, and Exhibit 7a, b). Dr. Tibbs also gave Appellant guidelines and lesson plan criteria that were designed for industrial arts. (11 -42). Altogether, Dr. Tibbs erred even when she spoke from her notes, (1 - 26 and 11 -5); to the extent that Ligens Moore, Appellee's attorney, cautioned her against the use of "jargon and theory," (1 - 22 and 24) to which the commission alluded in their decision and order.

During the thirty-day critical evaluation period, Dr. Tibbs made three **close-up observations**, while Mr. Hill made one.

1. On April 14th, Dr. Tibbs visited Appellant's Family Living class and acknowledged that her observation comments one through four were positive. However she said, "It appears that this lesson was presented for purpose of

supervisor's observation." (11 62 - 63). Feedback of the observation was typed on April 18th, and issued to Appellant thereafter.

2. On April 14th, Dr. Tibbs also visited Appellant's Food class and commented on students being noisy. Appellant would like to say that the students, more likely, were expressing anxiety, due to the sudden change of the lesson planned for the day that was interrupted when Mr. Hill in his memo instructed Appellant to prepare students for CAT and MEAP. Thus teacher taught lesson on measures and weights. Feedback of the observation was also typed on April 18th, and issued to Appellant thereafter.

3. On April 15th, Dr. Tibbs visited another Food class of Appellant and commented that "It is difficult to evaluate a teacher's instructional performance during a pencil and paper testing situation." Dr. Tibbs also acknowledged that "students were orderly during the entire class period." (Exhibit 3, and

AT BH - 6z). Feedback of the observation also typed on April 18th, and issued to Appellant thereafter.

4. On April 15th, Mr. Hill visited Appellant's Child Development class and used an objective evaluation form which listed twenty five items, under four categories, namely:

(a) Classroom Environment,
(b) Lesson Planning and Records,
(c) Teaching Learning Process, and
(d) Comments and Recommendation.

Each category had items to be circled satisfactory or need improvement. There was no category listed as unsatisfactory. Of the twenty five items, five were circled need improvement. (Exhibit 4 - Attachment 5).

In the commission's decision and order, Patricia montgomery, member of the tenure commission, expressed her opinion the following way:

"First, I find that Appellant's burden was increased greatly by Appellee's failure to provide food supplies for her cooking classes for

most of the year. This lack of basic instructional materials undoubtedly made the task of keeping the students involved and motivated more difficult. Moreover the administrators insistence that Appellant stress reading and math skills also decreased Appellant's opportunities to provide lessons which involved hands-on experience for the pupils. Once again this limitation surely impacted on the nature and success of Appellant's lessons. This in turn affected Appellant's ability to maintain control. In short I find that Appellee's Administration must bear part of the responsibility for the poor instruction and disorder in Appellant's classroom."

"Second, I must express some concern about the Administrator's attempts to **assist** Appellant's efforts to **improve. The record here show the administration gave Appellant notice of deficiencies and some minimal suggestions for eliminating the problems and a few momths** (should have been a few weeks from March 17 to

April 15) **time to make the corrections. The efforts barely satisfy the most rudimentary elements required of our prior decisions.** See Chesher v. Coldwater Community Schools, (73 - 56 - R), Benton Harbor v. Wolf, 139 Mich. App 148; 361 NW2d 750 (1984) **I believe Appellee and the teachers it employs would be better served by providing teachers with performance deficiencies with more comprehensible and coordinated instructions for improvement than Appellant was given here. Indeed I believe that the quality and efficiency of the entire educational process would be improved if more effort and thought were given to the assistance provided to the individual teacher in these situations."**

In addition to Ms Montgomery's opinions, the Court should also read or listen to **testimonies of Appellant's witnesses** that appeared to be ignored.

1. Mr. Hacket: teacher from Southeastern High School testified that students 'got along

well with Appellant during the time she was at Southeastern, substituting in the area of earth science (1V 8 - 9)

2. Mrs. Lanier: teacher from Boynton Middle School testified that when she was invited to Appellant's classroom, Appellant was teaching safety in sewing; Appellant's rapport with students was excellent; and Appellant's lesson plans were detailed with all the required categories. (1V 17 - 19).

3. Mrs. Littlefield: teacher from Von Steuben Middle School testified about the insulting and discriminatory remark made by principal to Appellant. (1V - 13)

4. Mrs. Graham: teacher from Beaubien Middle School testified that during the times that she took her students to lunch, she had to pass by Appellant's classroom, and she never heard any noise. However she thought it was an unusual situation for Mr. Bibbs to come to her classroom to call and interview students about Ms. Bailey, causing the

students to be upset, and causing them to make remark that "Ms. Bailey's going to get fired." The ten to fifteen students she said were pulled from her class, for questioning, were over half her class size. (1V 23, 25 - 26).

5. Mr. Williams (Harold): teacher and building representative from Beaubien Middle School testified that "the administration didn't seem to want to hear any positive points about Ms. Bailey, it had to be negative." Furthermore "when a person is put on thirty days notice, they have thirty days to make some improvement. It doesn't mean they have to be a perfect teacher, but you have to make some improvement. In this case where Mr. Hill did on his evaluation state that Mrs. Bailey had made improvements they seemed to ignore them. (1V - 38). "We tried to state the fact that there was improvement, but they didn't seem to consider it. We raised the issue, but like I said, they just ride over

it. After acknowledging that that was unusual, Mr. Williams further stated that "according to the contract, if a teacher makes improvement, then it seems that the teacher shouldn't be written up unsat." (1V 36 - 37).

6. Shawn: student from Beaubien testified that he was at Beaubien from 1981-83, and did have to pass by Ms Bailey's classroom daily; about four times a day, going to different classes, and he never saw any incidents occuring around Ms. Bailey's classroom. However he saw an incident where Mrs. Bibbs (wife of Mr. Bibbs) and two other teachers were laughing at Ms. Bailey. Shawn described the situation where he saw Mrs. Bibbs pointing down to where Ms. Bailey was, as she was stepping out of her classroom. And Mrs. Bibbs and the other teachers were laughing over the outfit Ms. Bailey was wearing, which he said he didn't consider funny. Furthermore Shawn testified that he never heard any noise, saw any flood or water flowing out; or saw any fire

occuring; or heard any other students talking of such incidents, at anytime, in connection with Appellant's classroom. (V1 131 - 134)

In this case, compared to other cases, the issue is whether Appellee's evidence supports a finding that Appellant was an incompetent teacher, thereby, establishing reasonable and just cause for her discharge.

In Niemi v. Board of Education of the Kearsley Community School District, (74-36) (Remand Opinion), pp. 4, and 5, the commission held that incompetence is a multifaceted charge incorporating a number of factors in varying degree. Among them is a lack of class room organization and harmony and dissatisfaction on the part of pupils and supervising authorities. Further, the general rule requires that a teacher must be given an opportunity to correct the alleged deficiencies before the charge will be upheld. In this jurisdiction, one court in discussing incompetence as just and reasonable cause for dis-

charge held ".... it can be shown only by significant evidence proving that a teacher is unfit to teach." Beebee v. Haslett Public Schools, 66 Mich. App 718, 239 NW2d 724 at 728 (1976). Such a finding requires a showing of adverse effect on students, other teachers, and school staff.

In Canini v. Board of Education for the Detroit Public Schools, (88 - 2), pp. 3 and 4, the commission held that "Although a school board need not provide specialized or extraordinary training, the teacher must be granted a sufficient opportunity under the circumstances to correct the deficiencies. In Perron v. Board of Education of the Royal Oak School District, 155 Mich. App 759; 400 NW2d 709 (1986), the commission further decided in behalf of Canini that "Appellant claims neither the notice nor the opportunity to improve provided by Appellee were adequate to satisfy this requirement." The commission also held that "more time than the scant six weeks pro-

vided ... was required to allow Appellant to practice, rehearse and polish the skills involved."

In Lanier v. Board of Education for the Detroit Public Schools, (90 - 11), pp. 1, 18, and 19), on the first page of the commission's decision and order, the first charge was written identically to that in Bailey v. Board of Education for the Detroit Public Schools, (86 - 11). As in the Canini's case, the commission in Lanier's case held that "the two opportunities over a short period of time to satisfy each evaluator's criticisms was not reasonable or sufficient." Further the commission concluded that "Appellee failed to provide sufficient evidence that Appellant was unfit to teach. In a short period of time Appellant improved in several of the recommended areas. In the areas which remained unimproved as of the final evaluation, we cannot find anything so serious as to constitute reasonable and just cause for discharge. The un-

corrected deficiencies, considered individually or together, simply do not amount to 'significant evidence that [appellant] was unfit to teach.' Wolf, supra. Thus, we find that the first charge has not been proven."

In Husain v. Board of Education for the Detroit Publis Sshools, (90 - 1), pp. 10 and 11), "Appellant argues that Appellee failed to meet its obligation to provide him with a meaningful opportunity to improve his performance." The commission based on evidence in this record held that "Appellant had barely six weeks from the first evaluation noting deficiencies until he was finally rated unsatisfactory." While the commission in this case rejected Appellant's claim that Appellee failed to provide meaningful suggestions regarding ways to improve, the commission concluded that "this record does not show that Appellee met its obligation to afford Appellant with a reasonable opportunity to bring his performance to the standard Appellee sought to require.

As this opportunity is necessary to establish just and reasonable cause for discharge, we must conclude that Appellee has failed to carry out its burden of proof in this case."

Based on the foregoing, in the Bailey's case, Appellant experienced the same conditions relative to the following findings by the commission:

(a) Appellee's obligation to provide opportunity to correct alleged deficiencies not met. Chesher, supra. Niemi, supra. Husain, supra.

(b) There was no adequate or meaningful opportunity given Appellant to improve. Wolf, supra.

(c) There was no proof that Appellant was unfit to teach due to adverse effect on students, teachers, and school staff. Beebee, supra.

(d) There was no adequate time period given Appellant to improve. Canini, supra.

(e) There was no adequate notice and opportunity given Appellant to improve. Perron, supra.

(f) Where Appellant made several improvements in a short period of time, during Appellee's classroom observations, Appellee failed to consider them. Lanier, supra.

(g) And Appellee further failed to tell the

> truth, because there were no serious events to constitute reasonable and just cause for discharge. Lanier, supra. Husain, supra.

With all these similar findings cited in the cases above, the commission upheld the charges against Appellant, and decided in favor of her discharge.

Based on the foregoing indicated on page nine in the commission's decision of the Canini's case, Bailey feels that the commission should have stated similarly in her behalf, as it did for Mr. Canini in saying, "we must conclude that Appellee failed to meet its obligation to provide Appellant with reasonable opportunity to improve under the circumstances. Accordingly, we are constrained to hold that under Perron supra, Appellee has failed to establish just and reasonable cause for discharging Appellant. Further, while we are concerned about the quality of Appellant's performance, we find that under Wolf, supra and Lakeshore Board of Education v. Grindstaff

177 Mich App; ____NW2d ____(1989), the only opinion available is to order Appellant's reinstatement. Naturally, Appellee is free to afford Appellant yet another opportunity to improve, hopefully a meaningful opportunity, should it discover that Appellant's performance continues to be inadequate following his reinstatement."

**Judging from the fact** that Appellant had good ratings, evaluation, and recommendation from other administrators, at other schools, sufficient to gain her continuing contract, is reason for not focusing on the Von Steuben, and Beaubien ratings alone, as her entire record; or, as reasonable and just cause to dismiss her; especially, when Mr. Posey Williams was observed by the commission for having retaliatory considerations. If credit is given to that observation and opinion, then Mr. Williams' unsatisfactory evaluation should be striked out, because it has not been proven true. Since the second unsatisfactory evalua-

tion rating (that of Mr. Bibbs) is an off-shoot of the first, or let's say was developed from the first (that of Mr. Williams) unsatisfactory rating, it suffices to say that it followed a scheme, or pattern that was conducted unfairly and improperly, and should also be striked out.

**Judging from the fact** that Appellant had merely four weeks, that is from March 17 to April 15 to improve, which is far less time than those reported in the decisions mentioned above, was not reasonable or just cause to dismiss her.

**Judging from the fact** that the commission found only minimal suggestions for Appellant to eliminate deficiencies over a short period of time is not reasonable and just cause to dismiss her.

**Judging from the fact** that Dr. Tibbs and Mr. Hill made their observations on April 14th and 15th; and, offered their written critiques after the thirty-day evaluation period,

that was from March 17 to April 15, makes it questionable as to what real assistance or opportunity to achieve could be given and implemented, is not reasonable and just cause to dismiss Appellant.

**Judging from the fact** that the tenure commission rejected the Appellee's claims that the Appallant's planning was inadequate and that she did not provide enough cooking experiences for her students, is not reasonable and just cause to dismiss her. The rationale on the planning issue was that the administrators failed to clearly state their complaints regarding Appellant's planning documents; and, further that administrator Hill checked Appellant's lesson plans every week and "never made any adverse comment about them." (TC decision, pp. 8, and 9). These holdings were affirmed by the circuit court.

**Judging from the fact** that the commission found many inadequacies in Appellee's supervision of Appellant is not reasonable and just

cause to dismiss her. Under this other finding it would be contradictory if the commission, at the same time, were to find that the Appellee also provided Appellant with adequate opportunity to improve, under such condition.

## VI. ARGUMENTS

**FIRST ARGUMENT: THE MICHIGAN SUPREME COURT, COURT OF APPEALS, OAKLAND CIRCUIT COURT, AND THE TENURE COMMISSION OVERLOOKED THAT THE UNREASONABLE AND UNJUST DISMISSAL OF APPELLANT VIOLATED HER CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW AND HER FIFTH AND FOURTEENTH AMENDMENTS.**

In this case the commission found that administrator Williams reacted retaliatory toward Appellant, who from the very beginning complained of sexual on the job harassment, from the administrator, and nothing was done. Appellant also complained about discrimination from the administrator, who introduced her in faculty meeting as "that one over there with the rag on her head," in reference to a scarf

that Appellant was wearing on her head (1V - 51, and 52). Mrs. Delores Littlefield, another teacher present at the neeting testified of hearing the remark (1V - 13).

Dr. Joyce Tibbs, supervisor, in another instance made remark to Appellant about "sanitation as it relates to foreign born diseases." (11 - 12, and 59). This remark was taken personally, since Appellant is from another country, namely, Jamaica; where discrimination is not practiced nor is an open life style.

Shawn, a student, also testified how he saw Mrs. Audrey Davis-Bibbs, wife of the late Mr. Bibbs, Principal, pointing at Appellant; and, joined by two other teachers, were all laughing at the outfit that Appellant was wearing.

Appellant found it strange for that sector of Afro-Americans to act so unkind. Needless to say, the over-all erroneous charges, discriminatory reactions, and sexual harassment affected Appellant's economic benefits,

and subjected Appellant to vulnerbility and violation of her human and constitutional rights. Further Appellant suffered emotional stress, anxiety, anger, bitterness, demotion, distrust, fatigue, fear, hopelessness, helplessness, sadness, unhappiness, and worry to mention a few. Then when Appellant appealed to the tenure commission, with hope that they would be objective, Appellant was soon to see that the commission, thus far, had prejudiced substantial rights of the Appellant by:

(a) Ignoring the Teacher Tenure Act which reads that "Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause ...." MCLA 38.101 et seq; MSA 15.2001 et seq.

(b) Failing to see that its decision is not supported by competent, material, and substantial evidence on the whole record.

(c) Being arbitrary, capricious, and clearly abusing unwarranted exercise of discretion.

(d) Subjecting itself to substantial and material error of law, and

(e) Upholding charges brought against Appellant, which are not based on her record

as a whole.

Relative to the Fifth Amendment, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the united States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdictation the equal protection of the law." Considering that the Fourteenth Amendment makes the due process clause of the Fifth Amendment apply to the states as well as to the federal government, is reason to note that, few rights are more important to have, than, due process of the law, and to see that Appellant is denied of it, is unconstitutional.

**SECOND ARGUMENT: THE APPELLEE'S ACTION IN DISCHARGING APPELLANT WAS NOT ONLY IMPROPER UNDER THE STANDARD OF REVIEW SET FORTH IN THE TEACHER'S TENURE ACT AND THE CONTRACT: BUT, WAS IN VIOLATION OF HER SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL OR HEARING.**

In this case Appellee has failed to present substantial, competent, and material evidence to support the charges stated earlier that were filed against Appellant. Relative to the Sixth Amendment, "The accused shall enjoy the right to a speedy and public trial." Appellant was not given a fair hearing because of the timeliness of the Board hearing from September 1983 to April 1986 and, because of the timely manner in which Dr. Tibbs took to get documents and feedback to Appellant.

## V11. REASON FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

On legal, issues the standard is whether

the commission's decision was in violation of the constitution or a statue; or, whether the decision was affected by other substantial and material error of law. MCLA 24.306 (1) (a) (f) MSA 3.560 (206) (1) (a) (f).

Undoubtedly, the commission, the circuit court, court of appeals, and the state supreme court have failed to clarify and decide the ambiguity or the matter in controversy as to whether or not the teacher was dismissed for reasonable and just cause, after a fair and speedy hearing; or, after due process of the law. The commission and the courts say "yes," the Appellant says "no," based on the above foregoing reasons.

The decision and order of the commission and the courts has departed from the accepted and usual course of judicial proceedings; and, has decided the federal question(s) in such a way that conflicts with applicable decisions of this Court. Consequently, this material error of law created a judicial environment

that deprived the petitioner of her constitutional right to due process of law and her Sixth Amendment right to a speedy trial or hearing as argued above.

## V111. CONCLUSION

Much of Appellant's evidence and testimoney appears to be suppressed or stifled; and, it appears that the issues are seen only from one viewpoint, the Appellee's viewpoint. What about the other side that shows one school year was built on the other one; and everything that happened in the subsequent years was an offshoot of the prior year?

Let's focus on the issues, beginning with Mrs. Evelyn Crane, assistant region superintendent at the time. Mrs. Crane rejected Appellant's second transfer request on the basis that she would grant the request only if Appellant changed the true reason which was retaliation from Mr. Williams, principal, of Von

Steuben, because Appellant complained on him, and refused his sexual overtones. No hearing or investigation was conducted regarding the matter; and, in short the principal moved with his power and team of fellow administrators to develop charges and rate Appellant unsatisfactory. According to contract procedure, Appellant was transferred to another school, namely Beaubien, where the late Mr. Bibbs was principal. Both principals knew each other, and were friends, from the time when Mr. Williams worked at Beaubien as assistant principal and following the time that Mr. Bibbs recommended Mr. Williams for the principalship at Von Steuben. While Appellant was at Beaubien, it did not take long for the on the job sexual harassment to continue.

Where Appellant tried to present the fact that she normally maintained a beautiful and positive classroom atmosphere that was conducive to learning, at schools including Beaubien, the Commission failed to see. This fail-

ure to see occured despite the poster of photographs showing students participation in harmony; hands-on activities; students' projects exhibited, orange poster on wall with classroom rules, indicative of principles and guidelines that the students followed; in addition to the presence of administrators in attendance as a result of invitation (Board Hearing Exhibit 14). A receipt dated November 8, 1982 for $44.00 that Mr. Bibbs charged Appellant for having the classroom painted, supports the fact that Appellant not only created a positive atmosphere that fostered learning, but was generous as well. At other times, Appellant is known for using money from her pocket to buy food for her students. (BH Ex. 5).

Appellant's six witnesses, of varying ethnic backgrounds, who had seen Appellant in action and conducting her classes; and, who are familiar with Appellant's teaching style and high standard, testified that the charges against Appellant were false. But the Commis-

sion fails to see the alleged "set-up." That is, the charges that the administrators stated, all relate to March 8th, 9th, and 10th of 1983. The Incidents surrounding the alleged charges include Mr. Bibbs' instruction to Appellant to write up certain students, of hers, who at one time or another, were "no shows" for an after school detention, regarding for example, in-school truancy, and improper conduct in the boy's lavatory, which had no connection with Appellant's classroom discipline. Mr. Bibbs used that strategy, together with his power influence, and teamed with his fellow administrators to develop charges that would convince the Commission into believing that Appellant had 67 disciplinary referrals in one month; this reference is to the month of March, when in fact, Appellant had only three referrals.

Mr. Bibbs interferred with Appellant's contractual rights by pulling numerous students out of another teacher's classroom to question them about Appellant, and what they

were doing in Appellant's classroom, which if he visited as much as he stated formerly, he should have known (BH 1V 23-26). The incident about a fire extinguisher was reported and accepted as an accident, but Mr. Bibbs took the matter out of context, and proportion, build on it and reported it negatively.

Appellant's ratings from other school administrators were good (BH Ex. 12e & 13a-i). Despite the fact that Appellant showed improvements, especially, during the 30-Day critical period at Beaubien; and, despite the fact that she was never given an unsatisfactory mark on any given item on the evaluation forms, the ill-will motivated administrators teamed with other administrators to give Appellant over-all ratings of unsatisfactory for the 1981-82 and the 1982-83 school years.

Other relevant portions of the record will show that lesson plans were developed and presented according to four components, namely: OBJECTIVE, which includes introduction;

STRATEGY, which includes learning experiences, methods, and materials; ACTIVITY, which includes handouts, books, and what the students will do; and, EVALUATION, which includes the summary (BH Ex. Nos 6a-z). The topic and content taught were always related to home economics, and were always in sequence; except, where Mr. Hill interjected, relative to preparation for standardized tests, then, there would be a slight change. Any deviation, otherwise, meant that Mr. Hill would have issued a written comment to Appellant, and there were no comments, either verbally or in writing.

Moreover, the record will show further that Appellant's home economics food classes were hindered due to limited facilities; lack of duplicating papers, textbooks, food supplies and equipment. Even though the home economics classes were electives, students did not elect them; and, many students were thrown into foods classes where Appellee failed to provide the basic instructional mate-

rials , which was food. Despite all the shortcomings, the students did not behave in the unusual kinds of manner that the administrators described.

Earlier in the record, Appellant stated that Mr. Bibbs held private meetings with her in his office, twenty or more times; and, made professionally improper suggestions. Mr. Bibbs held and squeezed Appellant's hand (also in hallways during class change), and suggested that Appellant "smoked a joint" with him (BH V-79 & BH V1-123). When Mr. Bibbs became aware that Appellant was talking to the building representative of the union, and was seeking direction regarding some of the matter, Mr. Bibbs became suspicious, and teamed-up with other administrators to create a scenario by giving Appellant mixed signals that were confusing, misleading, and contradicting. At the same time, Mr. Bibbs and his team of fellow-administrators, allegedly operated under the guise of assisting Appellant correct and

eliminate deficiencies, that never existed, but were stated for the purpose of maximizing charges against Appellant's discharge. In couple related instances, Dr. Tibbs was even reminded about the use of jargons by her own board attorney, and by the Commission. While Mr. Hill who attempted to have the Commission believe that there was something wrong with Appellant's lesson plans, that he observed, checked weekly, and never made any adverse comments, was failed by the Commission for not clearly stating complaints about Appellant's planning documents. Despite all the evidence and testimony, however, the Commission continued to see things one-sidedly, and in the end ruled in favor of the Appellee.

After a careful review of the entire record the pervasive feeling is one of doubt on the part of Appellee's witnesses. There is doubt as to their credibility. There is no evidence that Appellant's students did not learn. There was no real assistance to Appel-

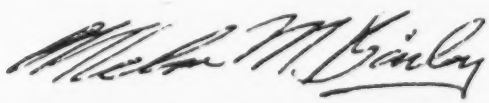
lant in eliminating the deficiencies that the Administration said it found. Therefore, as a matter of law, Appellee did not provide Appellant with an adequate opportunity to improve. Consequently, based upon Chesher, supra, and Niemi, supra, the tenure Commission's decision should be reversed.

For the above stated reasons and distinctions, the Petitioner believes that the State Supreme Court should have reversed the Tenure Commission's decision, the Circuit Court's decision, and the Court of Appeal's decision based on similar findings in Canini, supra; Husain, supra; Lanier, supra; et cetera. Just as it was true in these cases and the other cases cited above, so it is true in the Bailey's case, that Appellee did not provide Appellant with adequate opportunity to improve; did not provide meaningful suggestions regarding ways to improve; and, did not provide sufficient time in excess of the scant four weeks to improve.

The Petitioner is therefore taking the opportunity to exercise her Fifth, Sixth, and Fourteenth Amendment rights. Based on the case being presented, the Petitioner is left with no other choice, but to petition for Writ of Certiorari, and prays that this Court grants certiorari, in all fairness, to address the issues raised in this Petition.

DATED this 27th day of April, 1994.

Respectfully submitted,



Thelma M. Bailey, Pro Se
P. O. Box 1486
Berkley, Michigan 48072

NO.

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IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1993

THELMA M. BAILEY
petitioner

v.

BOARD OF EDUCATION OF THE
DETROIT PUBLIC SCHOOLS
Respondent

---

# PETITION FOR A WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS

## APPENDIX

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**APPENDIX A**

**Order** Michigan Supreme Court
Entered: November 30, 1993 Lansing, Michigan

Michael F. Cavanagh
Chief Justice

96929

Charles L. Levin
James H. Brickley
Patricia J. Boyle
THELMA M. BAILEY Dorothy Comstock Riley
Robert P. Griffin
Plaintiff-Appellant, Conrad L. Mallett, Jr.
Associate Justices

v SC: 96929
COA: 139568
LC: 88-356946-AA
DETROIT BOARD OF EDUCATION

Defendant-Appellee.

---

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

61123

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

_____, 19__ _____
Clerk

**APPENDIX B**

**STATE OF MICHIGAN**

**COURT OF APPEALS**

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THELMA M. BAILEY, April 30, 1993

Plaintiff-Appellant

v No. 139568

DETROIT BOARD OF EDUCATION,

Defendant-Appellee.

---

Before: Neff, P.J., and Gribbs and Brennan,JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order of the circuit court affirming the decision of the State Tenure Commission that defendant had established reasonable and just cause, as required by the Teachers' Tenure Act, MCL 38.101 et seq., for discharging plaintiff. We affirm.

Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause. MCL 38.101; MSA 15. 2001. Reasonable and just cause may be established only by significant evidence proving

that a teacher is unfit to teach. Hagerty v State Tenure Comm. 179 Mich App 109, 116; 445 NW2d 178 (1989). This Court reviews whether the decision of the State Tenure Commission is supported by competent, material, and substantial evidence on the whole record. Id, p 117.

We have carefully reviewed the record and conclude that there is competent, material, and substantial evidence that plaintiff was discharged for good cause. We therefore affirm the trial court's order affirming the decision of the Tenure Commission which held that defendant has established just and reasonable cause for plaintiff's discharge.

Affirmed.

/s/ Janet T.Neff
/s/ Roman S. Gribbs
/s/ Thomas J. Brennan

**APPENDIX C**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Received For Filing
Oakland County Clerk

THELMA M. BAILEY,

Plaintiff, '91 MAR 18 PCase No. 88-356946-AA

vs. By _____
Deputy County Clerk

THE BOARD OF EDUCATION FOR
THE DETROIT PUBLIC SCHOOLS

Defendant.

_____/

ORDER AFFIRMING DECISION
OF TEACHER TENURE
COMMISSION

At a session of the Court held
at the County Courthouse, Pontiac,
Oakland County, Michigan, on
MAR 18 1991, 1991.

PRESENT: HON. EDWARD SOSNICK
Circuit Court Judge

This matter having come before the Court on the appeal of the Plaintiff from the Decision and Order of the Teacher Tenure Commission dated August 12, 1988, briefs having been filed, oral argument having been held, and the Court being fully advised in the

**APPENDIX C**

premises.

IT IS HEREBY ORDERED that said Decision is AFFIRMED for the reasons in the Court's Opinion of August 1, 1990.

HON. EDWARD SOSNICK
Circuit Court Judge

## APPENDIX C

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Received For Filing
Oakland County Clerk

THELMA M. BAILEY,

Plaintiff, '91 MAR Case No. 88-356946-AA

vs. By _____
Deputy County Clerk

THE BOARD OF EDUCATION FOR
THE DETROIT PUBLIC SCHOOLS

Defendant.

_____/

OPINION

Appellant was a tenured teacher employed by the Board of Education of the Detroit Public Schools. She taught at the middle-school level in the field of her major course of study, home economics. In the years prior to the time when concerns arose about her performance, Appellant had been assigned to various different middle schools due to budget constraints and cutbacks. She was transferred to VonSteuben Middle School in 1981. The following year she was transferred to Beaubien Middle School.

In April 1983, charges were filed chal-

lenging Appellant's classroom methods pursuant to the Teachers' Tenure Act, MCL 38.101 et seq. The School Board conducted hearings in September and October of 1983, but did not complete the procedure. The hearings re-commenced in January 1986 and the process was completed in April 1986. The School Board decided that the charges against Appellant had been proven, and she was discharged. The Appellant appealed to the State Teacher Tenure Commission.

On January 7, 1988, the State Teacher Tenure Commission conducted a hearing of Ms. Bailey's appeal and heard testimony from four witnesses: Dr. Joyce M. Tibbs, Mr. Harold H. Hill, Ms. Thelma M. Bailey, and Mr. Shawn Lanier. The Commission also admitted eight exhibits into evidence. On August 12, 1988, the Commission issued its Decision and Order affirming the Board of Education's discharge of the Appellant. Appellant now appeals the decision of the Tenure Commission.

According to Nolte v Port Huron Board of Education, 152 Mich App 637 (1986) and Beebee

v Haslett Public Schools (after remand), 406 Mich 224 (1979), the power of this court in an appeal of the decision of the State Teachers' Tenure Commission is limited:

> This Court determines from the record whether the proof received by the controlling board or commission supports its findings. The standard of review is whether the decision is supported by competent, material and substantial evidence on the whole record.
>
> Nolte, Supra, at 646
> Beebee, Supra, at 231.

Also, according to the Michigan Constitution, Article 6, Section 28, the Commission's decision must not be contrary to law. Nolte, Supra.

Thus, it is the duty of this Court to examine the Decision and Order of the Commission and determine whether it is supported by sufficient evidence on the record.

The charges against the Appellant were as follows:

1) "Failure to effectively plan, prepare, develop, and provide appropriate lessons and instructional activities for your classes and to otherwise consider the

educational welfare of your students."

2) "Failure to effectively and efficiently control students within classroom so as to maintain a proper and safe atmosphere for learning."

In affirming the Board of Education's decision to discharge the Appellant, the Commission relied upon the following definitions and factors:

> Regarding the charges concerning incompetence, we find that incompetence is a term without exact definition. Our review of the law discloses that the charge of incompetence is the result of a finding by school officials of a pervasive pattern of behavior resulting in a lack of classroom organization and harmony and dissatisfaction on the part of the pupils and supervising authorities... In the majority of cases this Commission has reviewed, a number of charges regarding various aspects of the teacher's performance were combined to establish the charge of incompetence and held to justify the teacher's discharge. Incompetence, we find, is a multifaceted charge incorporating a number of factors in varying degree. Further, the general rule requires that a teacher must be given an opportunity to correct the alleged deficiencies before the charges will be upheld.
>
> ...(O)ne court in discussing incompetence as just and reasonable cause for discharge held it "...can be

> shown only by significant evidence proving that the teacher is unfit to teach." Beebee v Haslett Public Schools, 66 Mich App 718, 239 NW2d 724 at 728 (1976). Such a finding requires a showing of adverse effect on students, other teachers and school staff.
>
> The Beebee, Supra, court then set out The factors this Commission must look to in its determination of adverse effect.
>
> We note further that school boards and the Teacher Tenure Commission should, in each case make specific determination concerning the challenged teacher's knowledge of his subject, his ability to impart it, the manner and efficacy of his discipline over his students, his rapport with parents and other teachers, and his physical and mental ability to withstand the strains of teaching. Beebee, supra, 239 NW2d at 719. Niemi v Board of Education of the Kearsley Community District (74-36-R) aff'd 103 Mich App 818, 303 NW2d 905 (1981).

Appellant does not dispute that these factors were correctly cited, and she cites the same factors in her own brief.

The Commission found that, based on the records below, Mr. Posey Williams' eagerness to observe and evaluate the Appellant's performance was motivated by retalitory considerations. Nevertheless, the Commission ruled that this

fact did not work to negate the entire evaluation process (Decision and Order, p. 5).

Appellant argues that she was "railroaded" out of her job because of the incidents at Von-Steuben caused by Mr. Williams. She argues that she had always been rated as satisfactory until then. She also asserts that she was transferred to Beaubien Middle School where she was harassed by the principal, Mr. George Bibbs, who was a friend of Mr. Williams. Thus, Appellant claims that she began to receive unsatisfactory ratings as a result of the harassment of Williams and Bibbs, which led to her eventual discharge.

The Commission found that despite Mr. Williams' retaliatory motivation for reviewing Appellant's work, no harm actionable under the Tenure Act occurs if the work was in fact unsatisfactory. The Commission cited its decision in Cooper v Oak Park Schools (80-15) for the argument that a harassment defense must include proof that the supervisor's actions were improper or unreasonable and that the

actions interferred with the teacher's proper performance. In this case, the Commission found that there was nothing improper in conducting classroom observations (Decision and Order, p.5). Further, the Commission found that Appellant failed to show how any classroom observations or critiques impeded her ability to perform. This Court agrees with the Commission that no evidence has been presented showing that the observations themselves impeded Appellant's performance in the classroom.

Further, this Court agrees with the Commission that the School Board had the right to make such classroom observations. The Appellant acknowledges on page 7 of her Brief that such observations are provided for according to Section X111, E, 1, of her contract. Appellant admits that the required number of observations were made by the appropriate persons under her contract prior to her discharge (see p. 9 of Appellant's Brief). Appellant argues, however, that the observations and evaluations were made for the sole purpose of meeting her contract

requirements prior to discharge, rather than for the purpose of assisting her.

This Court finds that there is adequate evidence on the record to prove that the Appellant was offered assistance by her superiors on a number of occasions, and that the sole purpose of the observations was not to clear the path for her discharge.

Dr. Joyce Tibbs, Appellant's supervisor, observed Appellant's classes several times and testified that she offered Appellant several opportunities to improve (Transcript, p. 15). Dr. Tibbs testified that she offered Appellant written assistant in the form of basic lesson plan criteria (T. 16). Dr. Tibbs also testified that she offered "on-site assistance" by visiting the class on nine occasions and having six conferences with Appellant in which she pointed out areas she thought were weak and made recommendations for improvement (T. 16-17). Dr. Tibbs further stated that she offered Appellant the opportunity of having another teacher provide a demonstration in one of the areas in

which Appellant was interested (T. 16-15). Finally, Dr. Tibbs testified that she arranged for a professional baker, Mr. Cainer, to give a demonstration in Appellant's class (T. 16).

Thus, there is evidence on the record which shows that Appellant was given opportunities to improve in connection with the observations and evaluations of her superiors. The record supports a finding that there were many attempts made to assist the Appellant, especially on Dr. Tibbs' part, and that the observation and evaluation process was not conducted solely for the purpose of meeting contract requirements before discharging the Appellant.

In the Tenure Commission's Decision and and Order, the Commission relies primarily upon the testimony of Dr. Tibbs and Mr. Harold H. Hill, Appellant's Vocational Unit Head, in substantiating the charges against Appellant. The Commission found that Appellant had been discharged for just and reasonable cause because of unsatisfactory performance in the areas of classroom control and lesson planning and

delivery.

As to classroom control, the Commission concluded that a preponderance of the evidence established that Appellant's classroom discipline was deficient, and that she was unable to consistently manage her classroom and control her students so that an atmosphere conducive to learning could be established (Decision and Order, p. 8). This Court finds that there is competent, material, and substantial evidence on the whole record supporting the Commission's finding on this point.

According to the testimony of Dr. Tibbs, Appellant's classroom was "completely out of order." (T. 9). "Students were disorderly, they were hitting, they were kicking, they were running around the room. In some instances they fell out of their chairs. In some instances they worked on crossword puzzles, read comic books, read movie magazines. They filpped coins. They were just generally out of order." (T. 9). Dr. Tibbs also testified that the noise level was very high in Appellant's classroom as Appel-

lant was unable to quiet the students and simply shouted out instructions over the din (T. 15).

According to the testimony of Mr. Hill, the Vocational Unit Head, he observed the class on at least six occasions (T. 55). Mr. Hill testified that Appellant had an "inadequate amount of classroom control." (T. 56). He testified that "Students in general came in noisy. They were noisy throughout the presentation of her lesson, if she was able to present it at all. They were noisy on leaving. They did things such as playing cards as the teacher attempted to teach the class. They changed seats almost at will. They danced in the floor, and there are other documented instances of misbehavior...." (T. 57).

Mr. Hill testified that he attempted to help Appellant with her disciplinary problems. He told her that "she needed to bring the discipline under her control." (T. 62). He testified that in a one month monitored period the Appellant sent 67 students from her classroom for

discipline by other people, 41 of which were sent to one administrative counselor for discipline (T. 62). Mr. Hill further stated on the record that the "children don't pay any attention to her.... They didn't listen to her. They in some cases were verbally abusive towards her and they just did not give her proper respect as a teacher. So (she) was very, very seldom able to present an adequate lesson." (T. 64).

This Court finds that the evidence on the record as set forth in the testimony of Dr. Tibbs and Mr. Hill is sufficient to support the Commission's finding that the Appellant failed to effectively control her students in the classroom. In its Decision and Order, the Commission also noted that it had considered the testimony of Mr. George Bibbs, the principal of Beaubien Middle School. Such testimony was given in an earlier Board of Education hearing, the transcript of which was submitted to the Commission as an exhibit. Mr. Bibbs did not testify at the Commission hearing. This Court finds that even without considering the testi-

mony of Mr. Bibbs, which was adverse to Appellant, there is sufficient competent, material, and substantial evidence on the whole record establishing the charge against Appellant that she lacked control over her classroom.

The remaining charge against Appellant is that she failed to adequately plan and present lessons. The Commission held that a preponderance of the evidence established that Appellant's instructional methods were inadequate, and that she failed to gain and hold the students' interest in the subject matter thus adding to the students' inattentive and mischievous behavior (Decision and Order, p. 10). This Court finds that there is competent, material, and substantial evidence on the record supporting the Commission's holding on this point as well.

The Commission found that the administrators failed to clearly state their complaints about Appellant's planning documents (Decision and Order, p. 8). The Commission stated that Dr. Tibbs' explanation of the lesson plan require-

ments was full of technical jargon and that if Dr. Tibbs explained it to Appellant in a similar manner it is "unlikely that Appellant would be apprised of what changes she had to make;" (Opinion and Order, p. 9). Further the Commission found that Mr. Hill reviewed Appellant's lesson plans weekly and never made any adverse comment. Also, Dr. Tibbs did not ask Appellant for semester plans and unit plans until mid-March-long after the semester began. The Commission, thus found that the administration did not give Appellant reasonable or timely notice that her written plans were deficient; (Opinion and Order, p. 9).

Secondly, as to the administrators' concern that Appellant's classes lacked sufficient practical cooking instruction, the Commision agreed with Appellant that she received mixed signals from her superiors on that subject. According to Appellant's unrebutted testimony, the principal had told her early in the year that he preferred that she not have her students cook because he had no budget for food

supplies. Also, Appellant testified that she had utilized crossword puzzles and spelling tests in order to meet Mr. Hill's request that she emphasize verbal skills in preparation for upcoming standardized testing. Thus, the Commission found that the administration's complaints about lack of cooking instruction were without merit (Opinion and Order, p. 9).

The third aspect of the charge against Appellant regarding her inadequate methods of instruction involves her actual presentation of lessons to her students. On this point, the Commission held that Appellant's instructional methods were inadequate. The Commission relied upon the testimony of Mr. Hill, which indicated that the "Appellant's initial explanations and directions were terse, unclear, and she failed to state examples to guide the students. She would jump unexpectedly from one area to another." (Decision and Order, p. 10).

According to the testimony on the record of Dr. Tibbs, Appellant did not follow a "logical sequence of instruction." (T. 11). Of the

verbal exercises and spelling tests, Dr. Tibbs testified that "They appeared to me to be time fillers, just a waste of the students' time." (T. 12). Dr. Tibbs also testified that Appellant did not follow the sequence that she set forth in her lesson plans (T. 12). Dr. Tibbs further stated that she observed one cooking class conducted by the Appellant in which the students were not provided with the appropriate support materials, including recipes (T. 15). She also stated that because of the high noise level in classroom, Appellant had to constantly call out the ingredients to the students, and "in addition to that Ms. Bailey had not established a work plan for the students. So you had five to six students operating in the kitchen without having specific responsibilities." (T. 15). Further, Dr. Tibbs testified that Appellant "did not provide an **evaluation** for those students in the lab, so it was impossible to determine whether that lesson was appropriately prepared." (T. 15).

By the end of Appellant's probationary

period, Dr. Tibbs testified that she had noted some improvement, but that Appellant was still "unsatisfactory in performance, preparation, presentation, interaction, and relationships with students, cooperation with students, and other areas...." (T. 17). Dr. Tibbs restated this opinion in detail later in her testimony as reflected on pages 22 and 23 of the transcript.

According to the testimony of Mr. Hill, Appellant "had difficulty in presenting the lesson to the classes and getting the classes in a state of readiness." (T. 63). Mr. Hill also testified that "Ms. Bailey had difficulty in summing up the lesson to see if there had been learning on many of her lessons...there was no summation, there was no closure." (T. 63). Mr. Hill rated Appellant's instructive techniques as unsatisfactory because, based on his observations, the children didn't pay any attention to Appellant, so her methods were not being received. "Whatever methods she chose to use the students were not accepting them." (T. 64).

In her Brief and in her testimony, Appellant argues that, in effect, there was a conspiracy among the administrators to railroad her out of her job (T. 128). She also attacks the credibility of the witnesses for Appellee on various grounds, especially that of Mr. Bibbs. As stated earlier in this Opinion, Mr. Bibbs did not testify at the Commission hearing, nor is his testimony determinative of the establishment of the charges against Appellant. Furthermore, it is not for this Court to evaluate the credibility of the witnesses who appeared before the Commission.

It is the duty of this Court to determine from the record whether the proof received by the Commission supports its findings. Based on the evidence presented in the Commission hearing as reflected in the record, this Court finds that the Commission's decision is supported by competent, material, and substantial evidence on the record. The decission of the Commission is AFFIRMED.

EDWARD SOSNICK, CIRCUIT JUDGE

DATED: AUGUST 1, 1990

## APPENDIX D

STATE OF MICHIGAN
STATE TENURE COMMISSION

THELMA BAILEY
Appellant

v

Docket No. 86-11

BOARD OF EDUCATION OF THE
DETROIT PUBLIC SCHOOLS,
Appellee

Attorney for Appellant: Gayle S. Boesky
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Attorney for Appellee: Ligens D. Moore
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Michigan 48202
Phone: (313) 494-1117

DECISION AND ORDER

BACKGROUND FACTS

Appellant, a tenured teacher, was employed by appellee board and was assigned to teach in her major field of study, home economics, at the middle school level. In April of 1983, charges challenging appellant's classroom methods were filed pursuant to the Teachers' Tenure

Act. MCLA 38.101 et seq; MSA 15.2001 et seq. Appellee conducted hearing sessions in September and October of 1983 but did not complete the process. The hearing was resumed in January of 1986 and was completed on April 30, 1986. Appellee subsequently issued a decision determining that the charges had been established and, accordingly, concluded to discharge appellant.

Appellant promptly appealed to this Commission claiming that appellee's action was improper. The matter proceeded to hearing in January of 1988, following our resolution of appellant's preliminary motion to strike. The parties were then permitted to submit posthearing briefs. The last of these briefs was filed on June 2, 1988.

ISSUE

Has appellee established reasonable and just cause as required by the Teacher's Tenure Act for discharging appellant?

DISCUSSION

The charges found by appellee resulted in

appellant's dismissal for cause. In cases of discipline for cause on appeal to this Commission the controlling board bears the burden of proving the allegations of misconduct by a preponderance of the evidence. Luther v Board of Education of the Alpena Public schools. 62 Mich App 32, 233 NW2d 173 (1975). This Commission relies on the following definition and factors when reviewing charges, such as these, which bear on a teacher's professional fitness.

> Regarding the charges concerning incompetence, we find that incompetence is a term without exact definition. Our review of the law discloses that the charge of incompetence is the result of a finding by school officials of a pervasive pattern of behavior resulting in a lack of classroom organization and harmony and dissatisfaction on the part of the pupils and supervising authorities... In the majority of cases this Commission has reviewed, a number of charges regarding various aspects of the teacher's performance were combined to establish the charge of incompetence and held to justify the teacher's discharge. Incompetence, we find, is a multi-faceted charge incorporating a number of factors in varying degree. Further, the general rule requires that a teacher must be given an opportunity to correct the alleged deficiencies before the charges will be upheld.

> ...(O)ne court in discussing incompetence as just and reasonable cause for discharge held it"...can be shown only by significant evidence proving that the teacher is unfit to teach. Beebee v Haslett Public Schools, 66 Mich App 718, 239 NW2d 724 at 728 (1976). Such a finding requires a showing of adverse effect on students, other teachers and school staff.
>
> The Beebee, supra, court then set out the factors this Commission must look to in its determination of adverse effect.
>
> We note further that school boards and the Teacher Tenure Commission should, in each case make specific determinations concerning the challenged teacher's knowledge of his subject, his ability to impart it, the manner and efficacy of his discipline over his students, his rapport with parents and other teachers, and his physical and mental ability to withstand the strains of teaching. Beebee, supra, 239 NW2d at 719. Niemi v Board of Education of the Kearsley Community School District (74-36-R) aff'd 103 Mich App 818, 303 NW2d 905 (1981).

Moreover, the controlling board must show that the teacher was given notice of the specific nature of his/her perceived shortcomings and an **adequate opportunity to correct the deficiences.** Chesher v Coldwater Community Schools (73-56-R). The opportunity to improve requirement need not obligate the school board

to provide specialized or extraordinary training, however. Benton Harbor Schools v Wolff, 139 Mich App 148; 361 NW2d 750 (1984). We will weigh the evidence against these criteria.

The record shows that appellant taught home economics at several different middle schools in the years prior to the time when concerns about her performance were first raised. These frequent assignment changes were caused by budget constraints and cutbacks. She was transferred to Von Steuben Middle School on October 12, 1981. The principal there, Posey Williams, Jr., was critical of appellant as early as November of that year. By the close of the school year, she was rated "unsatisfactory" both by Mr. Williams and by the area Home Economics Education supervisor, Mrs. Mrozowski. Typically, appellee will transfer a teacher with performance difficulties to a new school to allow him/her an opportunity to improve under the supervision of different administrators. See Fortson v Board of Education of the City of Detroit (83-47), Jakub v Detroit

Board of Education (77-43-R). Here, appellant was transferred to Beaubien Middle School for the 1982-83 school year. The principal there was Mr. George Bibbs who observed her classroom only sporadically. During the course of the year, she was formally evaluated by the vocational unit head, Mr. Harold Hill, and by a different regional superviror, Dr. Joyce Tibbs. Again, these three individuals concluded that appellant's work was substandard.

Appellant maintains that none of these witnesses' observations or testimony should be credited. Appellant asserts that she was the victim of sexual harassment by Von Steuben's principal, Mr. Williams. According to appellant, he acted in retaliation for her refusal of his attentions. Further, appellant contends that all the other evaluators joined or acquiesced in his goal of unfairly depriving her of her employment with appellee.

Appellant produced evidence showing Mr. Williams' request for a date during a job interview and suggestions of employment diffi-

culties if she refused. Further, appellant showed that Mr. Williams moved almost immediately to conduct a performance review when appellant later came under his supervision. Moreover, it is clear that appellant made timely written complaints of harassment, discrimination and retaliation which went unheeded by the regional administration. Appellee board made no attempt to rebut this evidence. Thus, we conclude that Mr. Williams' eagerness to observe and evaluate appellant's performance was motivated by retaliatory considerations. Nevertheless, we cannot conclude that this fact works to negate the entire evaluation process.

We cannot accept the conclusion reached in appellant's argument for two interrelated reasons. First, even though ill-will motivated Mr. Williams to undertake review of appellant's work, no harm actionable under the Tenure Act occurs if the work was, in fact, unsatisfactory. In Cooper v Oak Park Schools (80-15) we held that a harassment defense must include proof, inter alia, that the supervisor's actions were

improper or unreasonable and that the actions interfered with the teacher's proper performance. Here, we can find nothing improper in conducting classroom observations. Also, appellant failed to show how either Mr. Williams' or any of the other administrators' classroom visits and critiques impeded her ability to perform. Second, we find the number of other administrative observers involved who were unrelated to Mr. Williams decreases the likelihood that a common scheme existed. We conclude that we cannot discredit the evidence proffered against appellant on this ground. We turn now to a consideration of the alleged deficiencies and the evidence offered to prove them.

The charges claim that appellant's performance as a home economics teacher was unsatisfactory in the areas of lesson planning and delivery and classroom control. Appellant's classroom at Beaubien was a foods laboratory. It contained several kitchen areas each with a stove, sink, and cupboards. The room also had a seating area consisting of large tables accommodat-

ing four or more students each. Further, the room was equipped with a washing machine and dryer.

Mr. Hill, the vocational unit head at Beaubien first observed appellant's classroom in November of 1982. He resumed his observations in the spring. Following his visits Mr. Hill notified appellant of several problems. He found that her classroom management and her lesson presentation were in need of improvement. Mr. Hill noted that several students misbehaved but appellant failed to correct them. (Appellee's Exhibit No 8 Attachment 5). Mr. Hill testified that he saw appellant's pupils ignore her lessons. They talked, changed seats without permission, played cards, matched coins and danced during class time. According to Mr. Hill these behaviors occured when the **class was supposed to be engaged in pencil-and-paper or bookwork assignments.** He never observed appellant's classroom when her students were engaged in cooking.

Beginning in late January of 1983, Dr.

Joyce Tibbs, the regional supervisor of Home Economics Education, began a series of observations of appellant. Dr. Tibbs provided appellant with a written report of each of these observations. Although there were delays of up to two weeks between Dr. Tibbs' visit and appellant's receipt of the report, we find that appellant was fully apprised of Dr. Tibbs' written comments and suggestions in mid-March when appellant was put on notice that she had **30 final days to make the required improvements.** (Appellee's Exhibit No 7).

Just as Mr. Hill found, Dr. Tibbs observed that appellant's classroom control was lacking. Dr. Tibbs testified that she saw appellant's pupils running around the room , throwing objects, socializing and reading movie magazines and comic books. The children were inattentive and sometimes disrespectful to appellant. Few students actively participated in the lessons. Moreover, when the class ignored her requests for quiet, appellant would just raise her voice to be heard over the din. The result was near

constant noise. (Bd Tr. Vol 1 pp 13-15; Appellee's Exhibit No 7).

The principal's testimony further supports the claim that appellant's classroom was very disorderly. She made a high number of referrals to the counselors for discipline. The principal was frequently required to enter appellant's room to quiet disturbances. According to Mr. Bibbs, he once entered appellant's room to find a magazine smoldering on one of the kitchen range burners. On a separate occasion, a student set off the fire extinguisher. Another time, Mr. Bibbs was called to the room to restore order while a professional baker was giving appellant and her class a demonstration as part of the administration's attempts to assist her. The professional baker had called on the principal for help with regaining order. (Bd Tr. Vol 111 pp 12-14, 20-24).

Appellant responds to these proofs with two arguments. She contends that the administrators over-dramatized the conditions in her classroom and they ignored the improvements she had made

in her control methods. We find no merit to her first argument. Second, although appellant was able to adequately manage the pupil's conduct on some occasions, we find that she had to resort to extraordinary measures to do so. For example, she taped the students while they wrote an **examination**. Further, she would disregard her planned lesson or present a lesson which was unrelated to the subject the class was studying that week. Dr. Tibbs concluded, and we agree, that appellant made these deviations to increase her control while she was being observed. (Appellee's Exhibit No 7 Attachment 10). Therefore, we conclude that appellee has shown that appellant's classroom discipline was deficient. She was not able to consistently manage her classroom and control her students so that an atmosphere conducive to learning could be established. This charge is established by a preponderance of the evidence. The remaining charge focuses on the adequacy of appellant's instruction. The administrators raised concerns about her instruction in three areas. They criticized

documentation of her daily unit and semester plans, her heavy emphasis on **pencil-and-paper and bookwork assignments instead of cooking experiences**, and her organization and and presentation of lessons in general.

We find that the administrators failed to clearly state their complaints about appellant's planning documents. For example, Dr. Tibbs found appellant's lesson plans were inadequate because they did not conform to the detailed requirements of four element format expected in vocational education. Dr. Tibbs explanation of these requirements was very involved, highly technical and replete with jargon, however. (See Bd Tr. Vol 1 pp 15-21). Thus, if Dr. Tibbs explained the information to appellant in a similar manner, we find it unlikely that appellant would be apprised of what changes she had to make. Moreover, the vocational unit head, Mr. Hill, reviewed appellant's lesson plan book weekly and never made any adverse comment. Similar difficulties arose with Dr. Tibbs' objections to appellant's semester plans and unit

plans. (See Appellee's Exhibit No 7 Attachment 8). Dr. Tibbs never communicated her desire that appellant draft these documents until mid-March--long after the second semester began. Thus, we cannot find that the administrators gave appellant reasonable or timely notice that her written plans were deficient.

The second concern regarding appellant's instructional activities focuses on the lack of practical cooking experiences for the students in appellant's lessons. We find that appellant was first advised in March of 1982 that she was expected to increase the amount of student cooking exercises. According to appellant's unrebutted testimony, the principal had told her early in the year that he preferred that she not have her students cook since he had no budget for buying food supplies. (Bd Tr. Vol 111 pp 84-85). Further, appellant defended her frequent use of spelling tests and crossword puzzles as activities that fulfilled Mr. Hill's insistance that vocabulary skills be emphasized to prepare the students for

**upcoming standardized testing.** (STC Tr. Vol 1 pp 96-100, 118). Thus, we cannot find fault in appellant's failure to provide enough cooking experiences prior to mid-March. We find that appellant's decision to sharply limit cooking assignments thereafter has not been adequately explained on this record.

Finally, we review appellee's concerns about the organization and presentations of appellant's lessons. Mr. Hill's observations revealed that appellant's initial explanations and directions were terse, unclear and she failed to state examples to guide the students. She would jump unexpectedly from one area to another. Further, Mr. Hill observed that appellant would disturb the normal routine just prior to examinations by reassigning their seats. One lesson Mr. Hill observed involved nothing more than several individual students reading orally from the text. At other times appellant had her students spend the majority of their time copying written information from the chalkboard. Further, appellant frequently

failed to supply the class with enough copies of handouts and texts to allow each student to work individually. Appallant also failed to close her lessons with a summary or to include **means of determining whether the students had learned the information and skills** she had sought to convey. (Appellee's Exhibits Nos 7 and 8). In short we find that appellant's instructional methods were inadequate, as such, she failed to gain and hold the student's interest in the subject matter thus adding to the students' inattentive and mischievous behavior. Thus we conclude that this aspect of the final charge has been shown by a preponderance of the evidence.

In summary, we find that appellant was unable to present adequate lessons and to control her students' behavior. These failings resulted in the lack of a positive atmosphere conducive to learning in appellant's classroom as shown by the students' frequent inattentive and disruptive behavior and by occasional incidents of disrespectful conduct toward the

teacher. We hold that appellee has established just and reasonable cause for appellant's discharge.

ORDER

We have read the record in this case and now and for the reasons stated above we order the following:

Appellant's petition is denied'

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Anne T. Patton, Chairperson

_____

Leonard M. Porterfield, Secretary

_____

Wilber L. Hass, Member

_____

Jon N. Schuster, Member

DATED: August 12, 1988

Concurring Opinion: Patricia M. Montgomery, Member

The relevant portions of the record include: Board Transcript Vol 1V pp 45-48, Staff Exhibit No 2 particularly the following items, Memorandum of November 20, 1981 p 5, from T. Bailey to P. Williams Regarding Response to Official Reprimand, Renewed Transfer Request from Von Steuben, May 17, 1982 letter from E. Crane rejecting transfer request.

## APPENDIX D

STATE OF MICHIGAN
STATE TENURE COMMISSION

THELMA BAILEY
Appellant

v

Docket No. 86-11

BOARD OF EDUCATION OF THE
DETROIT PUBLIC SCHOOLS,
Appellee

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CONCURRING OPINION
DECISION AND ORDER

BACKGROUND FACTS

I concur in the result reached by my colleagues because the record shows that appellant was an ineffective teacher. I write separately to express my concerns about the deplorable conditions which contributed to this teacher's failure.

First, I find that appellant's burden was increased greatly by appellee's failure to provide food supplies for her cooking classes for most of the year. This lack of basic instructional materials undoubtedly made the task of keeping the students involved and motivated more difficult. Moreover, the administration's insistence that appellant stress reading and math skills also decreased appellant's opportunities to provide lessons which involved hands-on experience for pupils. Once again, this limitation surely impacted on the nature and success of appellant's lessons. This, in turn, affected appellant's ability to maintain control. In short, I find that appellee's administration must bear part of the responsibility for the poor instruction and disorder in appellant's classroom.

Second, I must express some concern about the administration's attempts to assist appellant's efforts to improve. The record here shows the administration gave appellant notice of deficiencies, some minimal suggestions for

eliminating the problems and a few months time to make the corrections. These efforts barely satisfied the most rudimentary elements of the remediation requirements of our prior decisions. See Chesher v Coldwater Community Schools (73-56-R), Benton Harbor Schools v Wolff, 139 Mich App 148; 361 NW2d 750 (1984). I believe appellee and the teachers it employs would be better served by providing teachers with performance deficiencies with more comprehensible and coordinated instructions for improvement than appellant was given here. Indeed, I believe that the quality and efficiency of the entire educational process would be improved if more effort and thought were given to the assistance provided to the individual teacher in these situations.

_____

Patricia M. Montgomery, member

DATED: August 12, 1988